IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 55 OF 2003

1. M/s. Pilco Pharma
   Pvt. Ltd., K23/27,
   Saresh Bagh, Kanpur,
   Uttar Pradesh, 208 012
   Accused No.1.

2. Mr. S. G. Gulati,
   Managing Director,
   M/s. Pilco Pharma Pvt.
   Ltd., r/o 120/92,
   Lajpat Nagar, Kanpur,
   Uttar Pradesh,
   Accused No.2.

3. Mr. D. K. Seth,
   Director, M/s. Pilco
   Pharma Pvt. Ltd., r/o
   124-A/509, 11 Block,
   Govind Nagar, Kanpur,
   Uttar Pradesh,
   Accused No.3.

4. M/s. Gulati Enterprises,
   123/37, Saresh Bagh,
   Kanpur, Uttar Pradesh,
   Accused No.4.

5. Mr. Raman Kumar Gulati,
   (Active Partner),
   M/s. Gulati Enterprises,
   r/o 120/92, Lajpat Nagar,
   Kanpur, Uttar Pradesh,
   Accused No.5. ... Applicants.

versus

State of Goa,
through Inspector of Drugs,
Shri Ratankumar V. Arlekar,
Director of Food & Drugs
Administration, Government
of Goa, Panaji, Goa. ...Respondent.

Mr. S. G. Bhobe, Advocate for the Applicants.

Mr. S. N. Sardessai, Public Prosecutor for the State.

CORAM: P. V. HARDAS, J.

DATED: 17TH JULY, 2003.

ORAL JUDGMENT

The Applicants/Original Accused Nos.1 to 5 have filed the present application under Section 482 of the Code of Criminal Procedure challenging the Judgment of the Additional Sessions Judge, at Panaji, in Criminal Revision Application No.77/2001, dated 12th September, 2002, confirming the Order passed by the learned Judicial Magistrate, First Class, Bicholim, declining to discharge the present Applicants in Criminal Case No.51/OA/99/A for an offence punishable under Sections 18(a) and 18(b) of the Drugs and Cosmetics Act, 1940 punishable under Sections 27(b), (c) and (d) of the said Act.

2. The facts as are necessary for the decision of this application are set out hereunder:-

The Complainant Drugs Inspector had lodged a complaint in the Trial Court stating therein that on 20th December, 1994, he had taken the sample of drug "Inframytin Skin Cream" from the premises of Original Accused No.10. He had sent a portion of the sample to

the Government Analyst and it was reported that the sample was not of standard quality. Copy of the Report was sent to Original Accused No.10 and Original Accused No.10 had disclosed that he had purchased the drug from Original Accused No.7. A sealed sample portion of the said drug was also sent to Original Accused No.7 and Original Accused No.7 had disclosed that the drug was supplied by Original Accused No.6. Accused No.6 had purchased the drug from Accused No.4 and Accused No.4 had disclosed that they had purchased the drug from Accused No.1. Original Accused Nos. 2 and 3 are the Directors of Accused No.1 and are engaged in its day to day activities.

3. The present Applicants had filed an application praying for discharge. The Original Accused Nos.6 to 10 had also filed an application for discharge. The learned Judicial Magistrate, First Class, by his Order dated 26th July, 2001, had dismissed the applications. Thereupon, two Revision Applications came to be filed before the Additional Sessions Judge at Panaji. Criminal Revision Application No.77/2001 was filed by the present Applicants while Criminal Revision Application No.78/2001 was filed by Original Accused Nos.6 to 10. The Learned Reevisional Court by the Order, impugned in this application, dismissed both the Revision Applications. The Original Accused Nos.6 to 10 have chosen not to

challenge the Judgment of the Additional Sessions Judge at Panaji, by which Criminal Revision Application No.78/2001 was dismissed.

4. Mr. S. G. Bhobe, learned Counsel appearing for the Applicants has urged before me that a sample was sent to the Director of Central Drugs Laboratory by the Drugs Inspectors and the sample was analysed after its expiry date. He has further urged before me that a copy of the Report had not been furnished to the manufacturer i.e. Accused No.1 and the drug had been sent to the Central Drugs Laboratory for analysis without the knowledge of Accused No.1. In support of his submissions, Mr. S. G. Bhobe, learned Counsel appearing for the Applicants has placed reliance on a Judgment of the learned Single Judge of this Court in **Ashok Sureshchand Bal and others** v. **State of Maharashtra** 2002 ALL MR(Cri)682.

5. In **Ashok Sureshchand Bal and others** v. **State of Maharashtra**(supra) the learned Single Judge of this Court has held that on account of the inaction and lack of diligence on the part of the Inspector in sending the sample to the Central Drug Laboratory before the expiry date of the drug, valuable right of the Accused under Section 25(4) had been lost. The ratio of the aforesaid Judgment is wholly inapplicable, in my

respectful submission, to the facts of the present case. The record reveals that on 7th March, 1996, a complaint had been filed by the Drugs Inspector. The expiry date of the sample was March, 1996. The learned Counsel has been unable to point out from the Report of the Central Drugs Laboratory that the sample had not been analysed by the Laboratory before the expiry date of the drug. In fact, the Report from the Central Drugs Laboratory, Calcutta was received by the Court on 18th April, 1996. The facts of the present case, therefore, are clearly distinguishable from the reported Judgment cited before me.

6. In respect of the other two submissions, the learned Public Prosecutor has placed reliance on the Judgment of the Supreme Court in **Amery Pharmaceuticals and another** v. **State of Rajasthan,** 2001 ALL MR(Cri) 1980. The Supreme Court has held that the manufacturer is not entitled to be supplied with the copy of the Report of the Analyst and he must challenge the correctness of the facts stated in the Report by resorting to any other modes by which such facts can be proved. The manufacturer can also avail himself of the remedy under Sub- Section 4 of Section 25 by requesting the Court to send the other portion of the sample remaining in the Court to be tested at the Central Drugs Laboratory.

7. The learned revisional Court has extensively dealt with the submission and by a reasoned Order has dismissed the revisions. The Applicants have come before this Court under Section 482 of the Code of Criminal Procedure challenging the findings of the two Courts below. No case is made out by the Applicants for interference in the Orders of the two Courts below and, therefore, this Criminal Miscellaneous Application is devoid of any merit and the same is dismissed.

P. V. HARDAS, J.

RD.